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Nos. 91-339 and 91-155

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., AND BRIAN RUMBAUGH,
Petitioners,

v.

WALTER LEE,
Respondent.

- and -

WALTER LEE,
Cross-Petitioner,

v.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC. AND BRIAN RUMBAUGH
Cross-Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF OF PROJECT VOTE, PEOPLE FOR THE AMERICAN WAY, AND FAMILIES U.S.A., AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

1. Whether the public concourses of airport terminals are public forums presumptively available for free speech in which the Port Authority's blanket prohibition against leafletting is unconstitutional.

2. Whether the Port Authority's sweeping ban on distribution of literature in the public concourses of its airport terminals is unconstitutional under a non-public forum analysis.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

SUMMARY OF ARGUMENT 2

ARGUMENT 4

I. THE PUBLIC CONCOURSES OF THE NEW YORK PORT AUTHORITY'S AIRPORTS ARE PUBLIC FORUMS 4

A. The Second Circuit Erred In Finding That The Expressed Purpose Of A Property Is Determinative Of Its Status As A Public Or Non-Public Forum 5

B. The Objective Characteristics Of Property, Including Actual Use Patterns, Rather Than A Subjective Statement Of Intended Purpose, Must Determine Whether The Property Is A Traditional Public Forum 6

C. Public Airport Terminals Are Public Forums Because They Meet The Necessary Objective Criteria 10

D. Under the Public Forum Standard, The Port Authority's Broad Ban On The Distribution of All Written Material Violates The First Amendment 13

Page

II. THE PORT AUTHORITY'S SWEEPING BAN ON DISTRIBUTION OF LITERATURE IS UNCONSTITUTIONAL EVEN IF THE AIRPORTS ARE NOT FOUND TO BE QUINTESSENTIAL PUBLIC FORUMS. 15

A. The Distribution of Literature In Public Places Has Always Been Regarded As Essential First Amendment Expression, And The Court Has Carefully Scrutinized Broad Bans On This Important Channel of Communication 15

B. Even If The Court Finds That The Airports In Question Are Not Public Forums, The Port Authority's Broad Ban On The Distribution of All Written Material Is Not a Reasonable Restriction 17

CONCLUSION 27

TABLE OF AUTHORITIES

Cases — Page(s)

Albany Welfare Rights Org. v. Wyman, 493 F.2d 1319 (2d Cir.), cert. denied, 419 U.S. 838 (1974) 26

Board of Airport Comm'rs of Los Angeles v. Jews For Jesus, 482 U.S. 569 (1987) 23

Buckley v. Valeo, 424 U.S. 1 (1976) 16

Chicago Area Military Project v. City of Chicago, 508 F.2d 921 (7th Cir.), cert. denied, 421 U.S. 992 (1975) 10, 22

City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750 (1988) 16, 20

Cohen v. California, 403 U.S. 15 (1971) 25

Cornelius v. NAACP Legal Defense and Ed. Fund, 473 U.S. 788 (1985) 20

Davis v. Massachusetts, 167 U.S. 43 (1897) 4

Eastern Connecticut Citizens Action Group v. Powers, 723 F.2d 1050 (2d Cir. 1983) 21

Fernandes v. Limmer,
663 F.2d 619 (5th Cir. 1981),
cert. dismissed, 458 U.S. 1124 (1982) 11, 24

Frisby v. Schultz,
487 U.S. 474 (1988) 7, 14, 15, 19

Gannett Satellite Information Network v. Metropolitan Transp. Auth.,
745 F.2d 767 (2d Cir. 1984) 21

Grayned v. City of Rockford,
408 U.S. 104 (1972) 4, 20, 21

Hague v. Committee for Industrial Organization,
307 U.S. 496 (1939) 7, 8, 22

Healy v. James,
408 U.S. 169 (1972) 16

Heffron v. International Society for Krishna Consciousness,
452 U.S. 640 (1981) 7, 14, 16, 18, 19, 23, 24

Henderson v. Lujan,
768 F. Supp. 1 (D.D.C. 1991), appeal docketed,
No. 91-5258 (D.C. Cir. Aug. 16, 1991) 8, 9

International Caucus of Labor Comms. v. Dade County,
724 F. Supp. 917 (S.D. Fla. 1989) 9

International Society for Krishna Consciousness v. Lee,
721 F. Supp. 572 (S.D.N.Y. 1989) 23

International Society for Krishna Consciousness v. Lee,
925 F.2d 576 (2d Cir. 1991) 6, 13, 17

Jamison v. City of St. Louis,
828 F.2d 1280 (8th Cir. 1987), cert. denied,
485 U.S. 987 (1988) 8, 11, 12, 22

Kuszynski v. City of Oakland,
479 F.2d 1130 (9th Cir. 1973) 11, 12

Lamont v. Postmaster General,
381 U.S. 301 (1965) 16

Lovell v. City of Griffin,
303 U.S. 444 (1938) 13, 16

Martin v. City of Struthers,
319 U.S. 141 (1943) 14, 16

Members of City Council v. Taxpayers for Vincent,
466 U.S. 789 (1984) 14, 18, 19, 24

Metromedia, Inc. v. City of San Diego,
453 U.S. 490 (1981) 18

Neighborhood Information Sharing Exchange v. Engler,
No. 4:91-CV-140 (W.D. Mich. 1991) 26

New York City Unemployed and Welfare Council v. Brezenoff,
677 F.2d 232 (2d Cir. 1982) 26

New York Times v. Sullivan,
376 U.S. 254 (1964) 25

Organization For a Better Austin v. Keefe,
402 U.S. 415 (1971) 14, 16

Perry Education Ass'n v. Perry Local Educators' Ass'n,
460 U.S. 37 (1983) 4, 5, 7, 9, 13, 17, 20

Project Vote v. Freeman,
Civ. No. 84-509-B (S.D. Iowa July 26, 1984) 26

Project Vote v. O'Hara,
No. 84-4333-CV-C-5 (W.D. Mo. Sept. 27, 1984) 26

Project Vote v. Ohio Bureau of Employment Services,
No. C-1-82-905 (S.D. Ohio Sept. 13, 1982) 26

Project Vote v. Orr,
No. I P. 84-394-C (S.D. Ind. March 25, 1984) 26

Project Vote v. Thornburgh,
No. 84-1255 (E.D. Pa. 1984) 26

Schad v. Borough of Mt. Ephraim,
452 U.S. 61 (1981) 18, 24

Schneider v. New Jersey,
308 U.S. 147 (1939) 13, 14, 16, 18, 19, 24

Stanley v. Georgia,
394 U.S. 557 (1969) 16

Stewart v. District of Columbia Armory Board,
863 F.2d 1013 (D.C. Cir. 1988) 21

Street v. New York,
394 U.S. 576 (1969) 16

Unemployed Workers Union v. Hackett,
332 F. Supp. 1372 (D.R.I. 1971) 26

United States v. Fennelly,
726 F. Supp. 871 (D.D.C. 1989) 23

United States v. Grace,
461 U.S. 171 (1983) 7, 9

United States v. Kokinda,
___ U.S. ___, 110 S. Ct.
3115 (1990) 5, 6, 7, 8, 9, 12, 17, 20, 23

United States Southwest Africa/ Namibia Trade & Cultural Council v. United States,
708 F.2d 760 (D.C. Cir. 1983) 10, 22

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council,
425 U.S. 748 (1976) 18

Wesberry v. Sanders,
376 U.S. 1 (1964) 25

Wolin v. Port of New York Authority,
392 F.2d 83 (2d Cir.), cert. denied,
393 U.S. 940 (1968) 11, 14, 16, 22

Statutes and Regulations

14 C.F.R. § 159.93 (1991) 12

45 Fed. Reg. 35,314 (1980) 12, 22

Miscellaneous

Laurence H. Tribe, American Constitutional Law
(2d ed. 1988) 5, 16

St. Louis Airport Authority Rule 1.05 12

City of Oakland Ordinance 1.151 12

Laurence H. Tribe, American Constitutional Law 993
(2d ed. 1988) 5

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The History and Theory of the Public Forum,
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Doctrine, 59 Cinn. L. Rev. 739 (1991) 5

INTEREST OF THE AMICI CURIAE

Project VOTE is a nationwide, non-partisan organization which seeks to increase civic participation by communicating with, educating and helping register to vote millions of Americans who have not previously participated in elections, particularly low-income and minority citizens. Since its creation in 1982, Project VOTE, working with local coalitions, has registered over 1.4 million new poor and minority voters, resulting in praise and support from Republicans and Democrats alike. One of Project VOTE's most important and effective activities is to work in conjunction with local organizations to engage in informational and voter registration campaigns aimed at low-income citizens in public waiting areas of unemployment and welfare offices and other such public places to which large numbers of citizens come. The federal courts have consistently recognized the First Amendment right of Project VOTE to engage in such activity. Project VOTE has requested leave to file an *amicus* brief in this case in order to vindicate in this Court the important First Amendment principle that government cannot forbid all First Amendment activity in these and other public places which are important forums for citizens to communicate with each other across the country.

People for the American Way ("People For") is a non-partisan, education-oriented citizens' organization established to promote and protect civil and constitutional rights, including First Amendment freedoms. Founded in 1980 by a group of religious, civic and educational leaders devoted to our nation's heritage of tolerance, pluralism and liberty, People For has frequently represented parties and filed *amicus curiae* briefs in litigation seeking to defend First Amendment rights. People For has requested leave to file an *amicus* brief in this case in order to help vindicate the important First Amendment principles at stake, particularly the principle that government cannot prohibit free distribution of literature and other First Amendment activity in government controlled and owned public places such as airport terminals and the public waiting rooms of government buildings where people congregate.

Families USA is a national, non-partisan advocacy organization which focuses its efforts on seeking fundamental

improvements to ensure access to affordable, high-quality health care and long term care for families across America. Among its other activities, Families USA speaks out on health care and related issues and has established a grass roots, legislative-alert network of senior citizens and others interested in such issues. Families USA has sought leave to participate as an *amicus* in this case because of its interest in helping to ensure broad participation by citizens in communicating and decision-making on vital civic issues and in preventing government action which improperly closes off entire public forums as places for citizens to receive information on such issues.

SUMMARY OF ARGUMENT

Under the public forum doctrine, as set forth by this Court, the public concourses of airport terminals should be categorized as traditional public forums. The opinion of the Second Circuit below erroneously interprets public forum doctrine concluding, contrary to established precedent in five Circuits, that public airport terminals are non-public forums. The Second Circuit opinion should be reversed in this respect.

Traditional public forums are not strictly limited to the quintessential, and increasingly anachronistic, examples of streets, sidewalks, and parks. This Court has carefully delineated the objective characteristics of those properties that embody the concept of a traditional public forum. These characteristics are found today in modern public thoroughfares such as public airport and bus terminals and train stations. The argument that public forum doctrine can be limited, however, by such means as allowing the government's own decisions concerning the purpose of property to determine public forum status or limiting traditional public forums strictly to historical concepts of streets, sidewalks and parks would emasculate the doctrine. Under such a view, the government would have unlimited discretion to determine when and if a regulation restricting protected speech is reviewed under a strict scrutiny or a reasonableness standard. Vesting such broad discretion in the government runs contrary to decades of precedent. *Amici* urge this Court to reverse the Second Circuit's opinion regarding the non-public character of public airport terminals and find that these terminals are traditional public forums in which the Port Authority's

free speech restrictions are subject to strict judicial scrutiny, and are therefore unconstitutional.

Even if the Court finds that the airport terminals are not "quintessential" public forums, the Court should uphold the Second Circuit's determination that the Port Authority may not constitutionally enforce a blanket ban on the distribution of literature there. Leafletting is fundamental to First Amendment expression, and restrictions on that type of activity are evaluated with special care. Moreover, the Port Authority's regulation imposes a categorical ban on this activity in places which, even if they are not viewed as traditional public forums, possess many of the objective characteristics of public forums and are among the few remaining sites uniquely suited for public expression in a society becoming increasingly insular.

In light of the important First Amendment concerns which are clearly implicated here, the Port Authority could only have justified its intrusion on free speech by showing, at a minimum, that the prohibited activity is incompatible with the normal activity of the airport terminals. This, however, it failed to do. Leafletting, one of the least disruptive forms of First Amendment expression, is plainly compatible with the nature of airport terminals -- public places to which millions of people are freely admitted who engage in significant social and commercial intercourse. Because leafletting is, on its face, compatible with the nature of airport terminals, the Port Authority's sweeping ban on distribution is not reasonable. The Port Authority has made no effort to tailor its regulation to certain times, quantities or sites within the terminals so that its asserted traffic-flow needs could be harmonized with First Amendment activity.

Although this particular case involves religious speech in airport terminals, the Court's holding will have implications for other core First Amendment activities as well. For example, the efforts of voter registration organizations like *amicus* Project VOTE, which inform citizens of their right to vote and enable them to exercise that right, could be endangered by this Court's decision. Numerous lower court decisions upholding the First Amendment right of such organizations to engage in this kind of fundamental

political speech on public property could be undermined by this Court's decision.

For these reasons, the judgment of the Court of Appeals that the Port Authority's leafletting regulation is unconstitutional should be upheld.

ARGUMENT

I. THE PUBLIC CONCOURSES OF THE NEW YORK PORT AUTHORITY'S AIRPORTS ARE PUBLIC FORUMS

This Court's assessment of free speech protections afforded under the First Amendment has evolved from an 1897 opinion upholding a ban on any public address upon publicly owned property without a permit,[1/] to an analysis based on the compatibility of the speech activity with the normal relevant activity of the forum,[2/] to the currently favored public forum doctrine.[3/] As the process of refining the public forum doctrine continues, it is imperative that the fundamental framework of the doctrine retain its integrity by maintaining a viable category of traditional public forums not limited exclusively to streets, sidewalks and parks.

The fundamental framework of the public forum doctrine set forth by this Court, properly applied, inevitably leads to the conclusion, as five Circuit Courts of Appeal have recognized, that municipal airports are quintessential public forums. As explained *infra*, any other reading of the public forum doctrine, such as the interpretation by the Second Circuit in its opinion below, would emasculate it and sharply curtail fundamental free speech protections.

1/ *Davis v. Massachusetts*, 167 U.S. 43 (1897).

2/ *Grayned v. City of Rockford*, 408 U.S. 104 (1972).

3/ *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983).

A. The Second Circuit Erred In Finding That The Expressed Purpose Of A Property Is Determinative Of Its Status As A Public Or Non-Public Forum

Under public forum doctrine as articulated by this Court, the character of the public property at issue determines the standard by which limitations on the First Amendment right of free speech on that property must be evaluated. *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 44 (1983). For these purposes, property is divided into three categories: traditional public forums, designated public forums, and non-public forums.

In traditional public forums and government-designated public forums, attempted government regulation of speech activities is subject to strict scrutiny. In non-public forums, however, government regulations need only be reasonable and "not an effort to suppress expression merely because public officials oppose the speaker's view." *Perry Education Ass'n*, 460 U.S., at 46. The first, and most critical, level of analysis under public forum doctrine, then, is a determination of the category of forum at issue. It is this analysis that the Second Circuit misconstrued in its opinion below.[4/]

4/ The present form of the public forum doctrine has come under attack from scholars and Justices alike. *See* Justice Brennan's dissent in *United States v. Kokinda*, ___ U.S. ___, 110 S. Ct. 3115, 3127 (1990); Laurence H. Tribe, American Constitutional Law 993 (2d ed. 1988); Robert C. Post, Between Governance and Management: The History and Theory of the Public Forum, 34 UCLA L. Rev. 1713, 1716 n.7 (1987) ("In a world of disputatious academic criticism, the unrelenting and unanimous condemnation of contemporary public forum doctrine is truly remarkable."); Richard B. Saphire, Reconsidering the Public Forum Doctrine, 59 Cinn. L. Rev. 739, 741-743 (1991) ("[T]he public forum doctrine has attracted few supporters in the scholarly community."). Because the analytical process used to determine the status of the public property at issue is ultimately the deciding factor in many First Amendment cases, debates over the correct analytical process to be applied lie at the heart of current criticism of the public forum doctrine. Particularly in the wake of this Court's plurality opinion in *United States v. Kokinda*, ___ U.S. ___, 110 S. Ct. 3115 (1990), the analytical process is being misconstrued and misapplied by some lower courts, including the Second Circuit in the decision below. It is the misinterpretation of

(continued...)

The Second Circuit's opinion erroneously interpreted this Court's plurality opinion in *United States v. Kokinda*, ___ U.S. ___, 110 S. Ct. 3115 (1990), to limit traditional public forums to property which the government has expressly declared to be available for multiple purposes or for protected expression. *International Soc'y for Krishna Consciousness v. Lee*, 925 F.2d 576, 581-82 (2d Cir. 1991). This is a misreading of *Kokinda*. The plurality opinion in *Kokinda* examined the objective characteristics, including use, of the property at issue, concluding that in that particular instance, the post office sidewalk at issue was not used in a manner that exemplified a traditional public forum. The purpose of the property, and the government's interest in facilitating that purpose, was determinative of the reasonableness of the regulation at issue, not the category into which the property was initially placed. Moreover, Justice Kennedy's concurrence read the characteristics of the property differently, implying that the property's use indicated it was a public forum.

As discussed below, the Second Circuit's analysis emasculates the public forum doctrine by: (1) effectively restricting the category of traditional public forums to historical concepts of sidewalks, streets and parks; and (2) placing unlimited subjective discretion in the government to determine the public nature of the property. This dangerous misconstruction of the public forum doctrine should be reversed.

B. The Objective Characteristics Of Property, Including Actual Use Patterns, Rather Than A Subjective Statement Of Intended Purpose, Must Determine Whether The Property Is A Traditional Public Forum

The Court's early public forum decisions placed little emphasis on factors to be considered, or on the analytical approach to be applied, when categorizing public property. The Court relied almost exclusively on the historical traditions of public expression, concluding that streets, parks and sidewalks are quintessential public

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4/ (...continued)
Kokinda that has resulted in the Second Circuit's departure from the consensus among the courts of appeal that an airport terminal is a traditional public forum.

forums. *Hague v. Committee for Industrial Organization*, 307 U.S. 496, 515-516 (1939); *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983); *Frisby v. Schultz*, 487 U.S. 474, 480-481 (1988). As the oft-quoted language of *Hague* states:

> Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.

307 U.S., at 515. Thus, places historically associated with free exercise of expressive activities are considered, without more, to be public forums. *United States v. Grace*, 461 U.S. 171, 177 (1983).5/

While this approach correctly recognizes that core public places must be held open for community expression, it fails to accommodate explicitly the development of new, nonhistorical, "quintessential" public forums, such as the airport terminals at issue in the present case. This Court's more recent public forum decisions seek to resolve this difficulty by emphasizing factors beyond the property's historical character. A property's location, purpose, special attributes and customary use also are appropriately considered to determine whether it is a traditional public forum. *See United States v. Kokinda*, ___ U.S. ___, 110 S. Ct. 3115 (1990); *Heffron v. International Soc'y for Krishna Consciousness*, 452 U.S. 640, 650 (1981). The Court now has made explicit what was implicit in earlier public forum analysis: public property is not a public forum simply because it is called a "street" or a "sidewalk," but because it has the characteristics commonly

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5/ As recently as 1988, the Court stated that "[n]o particularized inquiry into the precise nature of a specific street is necessary; all public streets are held in the public trust and are properly considered traditional public fora." *Frisby v. Schultz*, 487 U.S. 474, 481 (1988).

associated with such traditional public places. *United States v. Kokinda*, ___ U.S. ___, 110 S. Ct., at 3120 (plurality opinion) ("[t]he mere physical characteristics of the property cannot dictate forum analysis."). This approach allows the flexibility to respond to the evolution of the loci of public discourse.

It is crucial in determining the public forums of modern society to maintain an emphasis on the "objective characteristics of Government property and its customary use by the public." *United States v. Kokinda*, ___ U.S. ___, 110 S. Ct., at 3125 (Kennedy, J., concurring). Determining when public property is a public forum must be based upon an objective assessment of its character, such as whether it is utilized as a public thoroughfare, and whether it is a place of open public access. The lower court, and apparently the federal government, have mistakenly interpreted the plurality opinion in *Kokinda* to approve the use of subjective factors, such as the government's expressed purpose of the property, in public forum analysis. This erroneous interpretation elevates form (defined by the government) over function (the property's actual use characteristics) and grants the government virtually unlimited discretion to determine for itself what is a public forum.

Resting such unbounded discretion over First Amendment rights in government hands has been disapproved consistently by the courts. "The Supreme Court has consistently invalidated such practices, in recognition of the immeasurable injury inflicted on first amendment freedoms by the potentially arbitrary and discriminatory exercise of an official's unfettered discretion." *Jamison v. City of St. Louis*, 828 F.2d 1280, 1284 (8th Cir. 1987) (striking down an airport regulation that gave the airport director "complete and unguided discretion to rule on applications to exercise first amendment rights"), *cert. denied*, 485 U.S. 987 (1988); *Hague v. Committee for Industrial Organization*, 307 U.S., at 516 (holding unconstitutional a Jersey City ordinance that enabled the Director of Safety to refuse a permit "on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage.'").

However, in *Henderson v. Lujan*, 768 F. Supp. 1 (D.D.C.), *appeal docketed*, No. 91-5258 (D.C. Cir. Aug. 16, 1991), the federal government has overtly attempted to dictate the status of even a traditional public forum, a sidewalk. Relying on the

plurality in *Kokinda*, the government argued that its own subjective characterization of the sidewalk on Constitution Avenue opposite the Vietnam Veterans Memorial as part of the Memorial justified a prohibition on distribution of literature on this sidewalk. The district court properly rejected the government's arguments, noting that "the government cannot 'transform the character of the property by the expedient of including it within the statutory definition of what might be considered a nonpublic forum parcel of property.'" *Henderson*, *supra*, at 2 (quoting *United States v. Grace*, 461 U.S. 171, 180 (1983)).

Under the Second Circuit's interpretation of *Kokinda*, if public streets were, like airport terminals, a recent innovation, they would not be a traditional public forum because their "overriding purpose" is to facilitate land transportation, not public debate and discourse. Public streets have never been devoted to assembly and debate "by government fiat"[6/], nor was assembly and debate ever the specific purpose of the streets. It is the actual use made of the streets, rather than the government's purported purpose for them, that has transformed streets into "quintessential" public forums. Similarly, it is the actual use made of airport terminals that establishes them as public forums and warrants reversal of the Second Circuit's decision below.

At least one court has taken to its logical extreme the Second Circuit's deference to the expressed purpose of a property, and explicitly interpreted the public forum doctrine to limit the category of traditional public forums solely to historical places. *See International Caucus of Labor Comms. v. Dade County*, 724 F. Supp. 917, 921 (S.D. Fla. 1989), where the court found a public airport to be a non-public forum because it was neither a historical public forum, *i.e.*, one created by "sheer weight of tradition," nor was it expressly designated as a public forum by the government. Such a position effectively vests total control over the determination of public forums in the government, contrary to established Court precedent. *Amici* urge the Court to clarify that traditional public forums are not restricted to outdated concepts of Main Street, USA, nor is the expressed government purpose or other subjective

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6/ *Perry Education Ass'n*, 460 U.S., at 45.

characteristics of public property determinative of whether that place is a *traditional* public forum.[7/]

C. Public Airport Terminals Are Public Forums Because They Meet The Necessary Objective Criteria

Public airports are not, of course, places for public discourse since "ancient time" nor have they been held in trust for public use "immemorially." Nonetheless, it must be recognized that as modern society evolves, so too will its natural meeting places. Where public parks were once considered a safe, central place for citizens to gather at their leisure, today's parks may often be locations to be avoided. Where once only paths, and then town lanes existed as public thoroughfares, now public airport terminals, train stations and bus stations are an integral part of the modern public thoroughfare. Like streets and sidewalks, terminals are open to all citizens, facilitate commerce and transportation, and are the focus of numerous commercial activities. Terminals are typically busy, noisy places where an audience can be found and speech activities are not out of place.

Significantly, every Court of Appeals that has heretofore considered the character of the hubs of modern transportation has held that they possess the objective characteristics of historical public forums. *See, e.g., United States Southwest Africa/Namibia Trade & Cultural Council v. United States*, 708 F.2d 760, 764 (D.C. Cir. 1983) ("Whatever common sense differences may exist in the forms of free speech allowable in airports, as opposed to parks and streets, an unusual consensus of judicial, legislative, and administrative opinion would classify the public areas of National and Dulles squarely within the public forum family"); *Chicago Area Military Project v. City of Chicago*, 508 F.2d 921, 925 (7th Cir.), *cert. denied*, 421 U.S. 992 (1975) ("the spacious, city-owned common areas [of Chicago's O'Hare Airport] . . . resemble those public thoroughfares which have been long recognized to be particularly appropriate places for the exercise of constitutionally

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7/ Such factors may, however, properly affect the determination of whether a particular regulation is an appropriate time, place and manner restriction, or a reasonable restriction.

protected rights to communicate ideas and information"); *Fernandes v. Limmer*, 663 F.2d 619, 627 (5th Cir. 1981), *cert. dismissed*, 458 U.S. 1124 (1982) ("The parallel between public streets and the . . . central concourses of the . . . terminal buildings, where air travelers as well as the general public may shop, dine, imbibe, and sightsee, is clear and powerful . . . ."); *Kuszynski v. City of Oakland*, 479 F.2d 1130, 1131 (9th Cir. 1973) (Oakland Airport); *Jamison v. City of St. Louis*, 828 F.2d 1280 (8th Cir. 1987) (City of St. Louis Airport), *cert. denied*, 485 U.S. 987 (1988); *Wolin v. Port of New York Authority*, 392 F.2d 83, 89 (2d Cir.), *cert. denied*, 393 U.S. 940 (1968) (Port Authority Bus Terminal: "In other times . . . travelers have waited by the roadside or under some shelter for the oncoming vehicle. But here, the buses drive into the building and the passengers meet them there. The terminal . . . becomes something of a small city -- but built indoors, with its 'streets' in effect set atop one another . . . . Thus, we cannot accept the argument that the mere presence of a roof alters the character of the place . . . .").

The Port Authority argued below that the New York airport terminals are not traditional public forums because their sole purpose is to facilitate air travel, not public discourse, and the exclusion of basic First Amendment activities is necessary to fulfill that purpose. This narrow view is the illogical equivalent to arguing that the sole purpose of a public park is to facilitate recreation, or that the sole purpose of a public street is to facilitate land travel. While the facilitation of air travel may be an essential purpose of airports, it clearly is not the *only* purpose. Business meetings are conducted at airport facilities, family members visit with relatives who have layovers between flights, businesses hawk wares ranging from food to postage stamps, people buy and read newspapers, magazines and books, and even discuss their contents with others in airport lounges.

Significantly, the federal government's regulations acknowledge the objective public forum character of airport terminals. According to the Federal Aviation Administration (FAA):

> in many respects, *the terminals are like any other public thoroughfare where there is no*

> *question that the Constitutional guarantees of freedom of speech, the exercise of religion and the right to peaceable assembly apply*. These activities enjoy the protection of the First Amendment, and they may not be regulated by airport authorities in the same manner as commercial activity.

45 Fed. Reg. 35,314 (1980) (emphasis added) (regarding Dulles and National airports in Washington, D.C.). FAA regulations specifically permit a broad range of First Amendment activities in these airports, including distribution of written and printed materials and solicitation of funds, subject to certain time, place and manner restrictions. 14 C.F.R. § 159.93 (1991). Similarly, St. Louis Airport Authority Rule 1.05 states that persons or organizations desiring to exercise constitutional freedoms "shall be protected in such activities, provided that the same do not constitute commercial activities and do not result in interference with transportation functions of the Airport." Airport Authority Rule 1.05, quoted in *Jamison v. City of St. Louis*, 828 F.2d, at 1282. *See also* City of Oakland ordinance 1.151, quoted in *Kuszynski v. City of Oakland*, 479 F.2d, at 1130-31 ("The use of the Airport for the purpose of exercising the right of free expression and communication, including but not limited to the distribution of non-commercial, non-obscene, non-subversive literature . . . shall not be allowed to impair or interfere with the transportation function of the Airport. The exercise of such rights shall be in accordance with the following rules and regulations . . . .").[8/]

As Justice Kennedy noted in *Kokinda*, "[a]s society becomes more insular in character, it becomes essential to protect public places where traditional modes of speech and forms of expression can take place." *Kokinda*, ___ U.S. ___, 110 S. Ct., at 3125

8/ There are also examples of government regulations, including the regulations at issue in this case, that expressly prohibit virtually all First Amendment activities in public airport terminals. This fact reinforces the argument that government regulations are not determinative of public forum analysis. If regulations were determinative, an airport facility in one city might be determined to be a public forum while a virtually identical airport facility in a similar city would be a non-public forum.

(Kennedy, J., concurring). Citizens may no longer pay neighborly visits in the park or stroll down main street. They do, however, congregate in public waiting rooms of public buildings. They emerge from their cars and circulate in public airport and bus terminals. If these places are not modern society's traditional public forums, then such places effectively no longer exist. To ensure that the public forum doctrine and its two-tiered standard for assessing the constitutionality of restrictions on free speech retains its integrity and vitality, *amici* urge this Court to reverse the Second Circuit's erroneous interpretation of the public forum doctrine and find that public airport terminals are a traditional public forum subject to strict judicial scrutiny.

D. Under the Public Forum Standard, The Port Authority's Broad Ban On The Distribution of All Written Material Violates The First Amendment

Because public airport terminals are public forums, the Port Authority's regulations on public airport terminals are analyzed under strict scrutiny. *Perry Education Ass'n*, 460 U.S., at 45. A time, place, and manner regulation in a public forum must be "content-neutral . . . narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Id.*

The Port Authority's regulation prohibits, in part, the "continuous or repetitive . . . distribution of flyers, brochures, pamphlets, books or any other printed or written material" to passers-by in the terminals of Kennedy, La Guardia and Newark airports. *International Soc'y For Krishna Consciousness v. Lee*, 925 F.2d 576, 578-79 (2d Cir. 1991) (citing the regulation in question).[9/] Under a strict scrutiny analysis, the Court has consistently struck down such broad bans on leafletting in public forums. *Lovell v. City of Griffin*, 303 U.S. 444 (1938); *Schneider*

9/ While each of the regulations in question in this case are arguably unconstitutional under either a strict or lesser level of scrutiny, these *amici* will focus their discussion on the constitutionality of the Port Authority's leafletting regulation since, as described *infra*, the Court's treatment of this part of the Port Authority's regulation is most directly relevant to *amici's* interests.

v. *New Jersey*, 308 U.S. 147 (1939); *Martin v. City of Struthers*, 319 U.S. 141, 146-47 (1943); *Organization For a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971).

The Port Authority's complete prohibition on leafletting does not serve a significant government interest. As discussed *infra*, leafletting is one of the least intrusive forms of First Amendment activity, and is not incompatible with the nature of airport terminals, which are open public spaces characterized by a significant amount of social and commercial intercourse. Any incidental annoyance caused by petitioner's activity is justified by "the constitutional protection of the freedom of speech and press." *Schneider*, 308 U.S., at 162; *Martin*, 319 U.S., at 146-47.

In addition, the Port Authority's regulation is not narrowly tailored. "A statute is narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *Frisby v. Schultz*, 487 U.S., at 485 (citing *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 808-10 (1984)). The Port Authority has made no showing that each instance of handing out a leaflet interferes with the purposes of the airport terminals. *See Taxpayers for Vincent*, 466 U.S., at 808-10 (finding constitutional a ban on posting of signs because each instance of posting inherently interfered with the government's interest). Nor has the Port Authority tailored its regulation, so as not to burden more speech than necessary, by limiting its restrictions to certain times, quantities and/or sites within the terminals. *See Heffron*, 452 U.S., at 648-54 (upholding a restriction on leafletting on public fairgrounds because the restriction was less than a total ban, and only limited distribution of literature to fixed locations).

Finally, the regulation does not leave open ample alternative means of communication. Where, as here, the government seeks to totally ban distribution of literature in a public forum, the Court has for some time rejected the view that such an action is constitutional because other forums are available for that activity. An individual "is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider*, 308 U.S., at 163; *Wolin*, 392 F.2d, at 91-92. The Port Authority's complete ban on

the distribution of literature thus cannot survive First Amendment scrutiny.

II. THE PORT AUTHORITY'S SWEEPING BAN ON DISTRIBUTION OF LITERATURE IS UNCONSTITUTIONAL EVEN IF THE AIRPORTS ARE NOT FOUND TO BE QUINTESSENTIAL PUBLIC FORUMS.

Amici urge the Court in Section I to reverse the Second Circuit's determination that the airports are not public forums, and consequently find that under strict scrutiny the Port Authority's broad ban on the distribution of literature violates the First Amendment. However, even if the Court finds that the Port Authority's leafletting prohibition does not operate in traditional public forums, *amici* urge the Court to uphold the Second Circuit's determination that the First Amendment requires the Port Authority to provide reasonable access to the terminals for the distribution of literature, and that the regulation, in completely closing off such access, is unconstitutional.

A. The Distribution of Literature in Public Places Has Always Been Regarded As Essential First Amendment Expression, And The Court Has Carefully Scrutinized Broad Bans On This Important Channel of Communication

An analysis of the Port Authority's ban on leafletting, which categorically prohibits the distribution of literature in public places, must begin with the recognition that the regulation "operates at the core of the First Amendment." *Frisby v. Schultz*, 487 U.S. 474, 479 (1988) (describing anti-picketing ordinance). As described below, the Court has long held that protecting the ability to disseminate written information in public is fundamental to ensuring the open exchange of ideas and information contemplated by the Constitution.

It is beyond dispute that the written dissemination of views, information, and opinions in the form of leafletting is protected by

the First Amendment.[10/] *Lovell v. City of Griffin*, 303 U.S. 444 (1938); *Schneider v. New Jersey*, 308 U.S. 147 (1939); *Organization For a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971); *Heffron v. International Soc'y for Krishna Consciousness*, 452 U.S., at 647. Early in the development of First Amendment jurisprudence, the Court emphasized that distributed pamphlets were "historical weapons in the defense of liberty," which "have proved most effective instruments in the dissemination of opinion," *Schneider*, 308 U.S., at 162, 164, and concluded that protecting the right to distribute information is "vital to the preservation of a free society." *Martin v. City of Struthers*, 319 U.S., at 146-47.

Even more recently, the Court made it clear that "peaceful pamphleteering 'is not fundamentally different from the function of a newspaper.'" *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 761 (1988) (quoting *Organization for a Better Austin v. Keefe*, 402 U.S., at 419). While both mediums provide essential means for communicating information and ideas, leafletting may in fact serve First Amendment interests which a newspaper cannot, because it provides a more accessible forum to those with diverse views or those who may not have the financial means to communicate through more elaborate channels. *See Martin*, 319 U.S., at 146.

For these reasons, leafletting traditionally has been viewed as fundamental to free expression, and the Court has accordingly evaluated the constitutionality of restrictions upon that kind of expression with special care. L. Tribe, *supra* note 4, § 12-24, at 988; *see also Heffron*, 452 U.S., at 649-55 (finding that time, place and manner restriction on leafletting at a state fair must serve a significant government interest, must be the least restrictive means of regulation and must leave open ample alternative channels for communication of the information); *Wolin*, 392 F.2d, at 92. With

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10/ Leafletting involves several related First Amendment rights: the right to express ideas, *see, e.g., Street v. New York*, 394 U.S. 576, 593 (1969); *Martin v. City of Struthers*, 319 U.S., at 143, the right to be exposed to ideas expressed by others, *see, e.g., Stanley v. Georgia*, 394 U.S. 557, 564 (1969); *Lamont v. Postmaster General*, 381 U.S. 301 (1965); *Martin*, 319 U.S., at 143, and the right to associate with others in the expression of opinion, *see, e.g., Buckley v. Valeo*, 424 U.S. 1 (1976); *Healy v. James*, 408 U.S. 169, 181 (1972).

these principles in mind, the Port Authority's ban on leafletting, as discussed below, is unconstitutional even if the terminals are not considered public forums.

B. Even if the Court Finds That the Airports In Question Are Not Public Forums, The Port Authority's Broad Ban On the Distribution of All Written Material Is Not a Reasonable Restriction

Even if the Court finds that the airports are not "quintessential" public forums, *amici* urge the Court to uphold the Second Circuit's determination that the Port Authority's ban on the distribution of literature is unconstitutional. In reaching its conclusion, the Second Circuit stressed the *Kokinda* plurality's finding that leafletting had a relatively small disruptive effect on government business, and emphasized Justice Kennedy's important concern with the need "'to protect public places where traditional modes of speech and forms of expression can take place." *International Soc'y For Krishna Consciousness v. Lee*, 925 F.2d 576, 582 (2d Cir. 1991) (quoting *Kokinda*, ___ U.S. ___, 110 S. Ct., at 3125 (Kennedy, J., concurring)). The Second Circuit's analysis is correct: it is plainly unconstitutional for the government to completely prohibit, in places uniquely suited for public discourse, an entire channel of expression which traditionally has been viewed as core First Amendment activity, and which is entirely compatible with the normal activity of those places.

At a minimum, any regulation of speech must be "reasonable and not an effort to suppress speech merely because public officials oppose the speaker's view." *Perry Education Ass'n*, 460 U.S., at 46. However, the Court has not, and should not, merely rubber-stamp time, place and manner restrictions on speech whenever it determines that a "quintessential" public forum is not involved. Such an approach endangers core First Amendment values by artificially emphasizing the significance of the public forum determination over other equally important concerns which are central to the Court's First Amendment analysis.

Aside from applying public forum analysis to a public place, the Court has also looked closely at the nature and scope of the

restriction at issue and its relation to (1) the asserted government interest, and (2) the *particular* characteristics of the regulated place. For instance, categorical bans on a particular medium of expression generally pose significant threats to First Amendment values, and call for careful scrutiny. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 526-27 (1981) (Brennan, J., concurring); *Schneider*, 308 U.S., at 160-62 (striking down complete bans on handbilling because less restrictive alternatives were available).[11/] In addition, "consideration of a forum's special attributes is relevant to the constitutionality of a regulation since the significance of the governmental interest must be assessed in light of the characteristic nature and function of the particular forum involved." *Heffron*, 452 U.S., at 650-51. Thus, determining the reasonableness of restrictions on speech in public places must also include an evaluation of these factors.[12/]

This applies equally to the regulation of speech in public places found to be non-public forums. For example, in *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1984), the Court, in considering an ordinance which prohibited the posting of signs on public property, carefully considered all the significant First Amendment implications of the regulation despite the Court's finding that the property covered by the regulation was a non-public forum. The Court focused on the fact that the ordinance broadly curtailed a manner of communication, and proceeded to analyze the significance of the asserted government interest, whether the

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11/ *See also Schad v. Borough of Mt. Ephraim*, 452 U.S. 61 (1981) (striking down zoning ordinance which totally banned live commercial entertainment because the government could not sufficiently justify its interests and because those interests could be satisfied with less intrusive means); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771 (1976) (striking down a state ban on advertising of prescription drug prices, and finding that such a complete prohibition on advertising could not be characterized as a mere time, place, or manner restriction).

12/ *See Schad*, 452 U.S., at 75-76, ("[t]o be *reasonable*, time, place, and manner restrictions not only must serve significant state interests but also must leave open adequate alternative channels of communication.") (emphasis added).

ordinance was narrowly tailored[13/] and whether it left open alternative channels of communication. In addressing the public forum issue, the Court stated that the non-public forum label was of "limited utility" in the case before it, and especially in cases "falling between the paradigms of government property interests." *Id.*, at 815 n.32.[14/] *See also Heffron*, 452 U.S., at 650-56 (distinguishing fairgrounds from the quintessential public forum of city streets, but then focusing on the significance of the government interest, the availability of alternative forums, the nature and scope of the regulation, and whether the regulation was narrowly tailored).

This case similarly implicates important First Amendment principles beyond the more formalistic distinction of whether the airports at issue are quintessential public forums.[15/] Even if the airport terminals are found not to be "quintessential" public forums, the airport terminals still possess objective characteristics very similar to streets, sidewalks and parks, and thus provide a unique opportunity for the dissemination and communication of

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13/ *See Frisby v. Schultz*, 487 U.S., 485-86, where the Court interpreted part of its ruling in *Taxpayers for Vincent*:

> A complete ban can be narrowly tailored, but only if each activity within the proscription's scope is an appropriately targeted evil. For example, in *Taxpayers for Vincent* we upheld an ordinance that banned all signs on public property because the interest supporting the regulation . . . rendered each sign an evil.

14/ While the Court in *Taxpayers for Vincent* upheld the regulation at issue, it explicitly distinguished its holding from that of *Schneider*, where the Court struck down a ban on leafletting. 466 U.S., at 809-10.

15/ As the *Vincent* Court suggested, "'the analytical line between a regulation of the "time, place, and manner" in which First Amendment rights may be exercised in a traditional public forum, and the question of whether a particular piece of personal or real property owned or controlled by the government is in fact a "public forum" may blur at the edges.'" *Taxpayers for Vincent*, 466 U.S., at 815 n.32 (quoting *United States Postal Service v. Greenburgh Civic Ass'n*, 453 U.S. 114, 132 (1981)).

information, especially by those of limited financial means.[16] *See* Section I, *supra*. For these reasons, they are clearly "more than a non-public forum," and demand higher scrutiny than "those instances where the Government created a nontraditional forum to accommodate speech for a special purpose," as with teachers' mailboxes in *Perry*, or the Combined Federal Campaign in *Cornelius v. NAACP Legal Defense and Ed. Fund*, 473 U.S. 788 (1985). *See Kokinda*, ___*U.S.*___, 110 S. Ct., at 3125 (Kennedy, J., concurring). In addition, within these unique public places the Port Authority here seeks a *complete ban* on an activity which, as discussed *supra*, has traditionally been recognized as central to First Amendment expression. Given the gravity of the various First Amendment considerations at stake here, the Court would seriously undermine First Amendment protection on a broad scale if it allows the Port Authority to ban the distribution of literature based predominately on a finding that airports are not traditional public forums.

Rather, when a complete ban on a particular channel of communication in public places is at issue, as it is here, the heightened threat to First Amendment freedoms warrants a closer examination of whether the activity at issue actually interferes with the normal activity of a public place:

> The danger giving rise to the First Amendment inquiry is that the government is silencing or restraining a channel of speech; we ask whether some interest unrelated to speech justifies this silence. To put it another way, the question is whether '*the manner of expression is basically incompatible with the normal activity of a particular place at a particular time.*'

City of Lakewood, 486 U.S., 763 (emphasis added) (describing time, place, and manner test which would apply to a complete ban on a particular manner of expression on public property) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972)); *see also*

16/ As society becomes more "insular in character," places like the airport terminals become even more valuable and unique as "public places where traditional modes of speech and forms of expression can take place." *See Kokinda*, ___U.S.___, 110 S. Ct., at 3125 (Kennedy, J., concurring).

Grayned, 408 U.S., at 116 ("The nature of a place, 'the pattern of its normal activities, dictate the kinds of regulations of time, place and manner that are reasonable.'") (citation omitted).[17]

Several circuit courts of appeal have reached the same conclusion, finding that a broad restriction on speech even in a non-public forum is "reasonable" only if the expressive activity is incompatible with the normal activity of the place being regulated. For example, in *Gannett Satellite Information Network v. Metropolitan Transp. Auth.*, 745 F.2d 767 (2d Cir. 1984), the court found that public property which is neither a traditional nor a designated public forum can still serve as a forum for First Amendment expression if the expression is appropriate for the property and is not "'incompatible with the normal activity of a particular place at a particular time.'" *Id.*, at 773 (quoting *Grayned*, 408 U.S., at 116). The court held that the presence of newsracks is not incompatible with the operation of train stations. *See also Eastern Connecticut Citizens Action Group v. Powers*, 723 F.2d 1050 (2d Cir. 1983) (finding that a state railway bed was neither a traditional or limited public forum, but holding that the state could not broadly prohibit demonstrations there without showing that the activity interfered or was incompatible with the place); *Stewart v. District of Columbia Armory Board*, 863 F.2d 1013, 1019-20 (D.C. Cir. 1988) ("compatibility is relevant to the ultimate determination of whether restrictions on speech are either reasonable or narrowly tailored to a compelling state interest").

Under these standards, the Port Authority's complete ban on distribution of literature in the airport terminals is not "reasonable."[18] Given the broad nature of this restriction, the

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17/ In *Grayned*, the Court upheld a narrowly tailored anti-picketing ordinance because it "punishes only conduct which disrupts or is about to disrupt normal school activities." *Grayned*, 408 U.S., at 119. In contrast, the leafletting regulation at issue here is an "impermissibly broad prophylactic ordinance." *Id.*

18/ The fact that the regulation only bans "repetitive" distribution is not relevant to First Amendment analysis. It can hardly be said that the Port Authority's prohibition is any less intrusive on speech because it allows a person to travel to the airport, hand out one leaflet, and leave. By definition, leafletting involves repetitive activity, as its purpose is almost always to reach a number of people.

fundamental expressive activity which it seeks to restrict, and the highly public nature of the regulated place, the Port Authority has not sufficiently shown that peaceful pamphleteering is incompatible or interferes with the activity which normally occurs in airport terminals.[19/]

The airport terminals are public spaces where people generally wait for a flight, mill about, shop or just pass through. Circuit courts of appeal have noted that this scene resembles a city street. "Both are lined by shops, restaurants, newsstands and other businesses, with travelers or other members of the general public coming and going as they please." *Jamison v. City of St. Louis*, 828 F.2d 1280, 1283 (8th Cir. 1987), *cert. denied*, 485 U.S. 987 (1988). Millions of people are freely admitted to and pass through these terminals each year, engaging in a "'considerable amount of social and commercial interchange.'" *United States Southwest Africa/Namibia Trade & Cultural Council v. United States*, 708 F.2d 760, 765 (D.C. Cir. 1983) (quoting FAA at 45 Fed. Reg. 35,314 (1980)). Because airport terminals possess these characteristics, they closely "resemble those public thoroughfares which have been long recognized to be particularly appropriate places for the exercise of constitutionally protected rights to communicate ideas and information." *Chicago Area Military Project v. City of Chicago*, 508 F.2d 921, 925 (7th Cir.), *cert. denied*, 421 U.S. 992 (1975) (citing *Hague v. Committee for Industrial Organization*, 307 U.S. 496, 515-16 (1939)).

Against this backdrop, leafletting is plainly compatible with the nature of airport terminals. *See, e.g. Chicago Area Military Project*, 508 F.2d, at 925 (peaceful leafletting did not interfere with activity of Chicago's O'Hare Airport), *Wolin v. Port of New York Authority*, 392 F.2d 83, 89-90 (2d Cir.), *cert. denied*, 393 U.S. 940 (1968) (ban on leafletting in bus terminal invalidated because the terminal, attended with "noisy crowds" and "less than perfect order," is an appropriate place to express one's views). Amongst a free flow of people engaging in social and commercial interchange

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19/ In its opinion below, the Second Circuit found the record sufficient to demonstrate that in-person solicitation is likely to cause disruption in the airport terminals. However, neither that court nor the district court made any such finding with respect to leafletting.

in an open public space, the act of handing out pamphlets to passersby is hardly disruptive.[20/] Indeed, the Court has recognized that leafletting is one of the least disruptive forms of expression and communication:

> One need not ponder the contents of a leaflet or pamphlet in order mechanically to take it out of someone's hand . . . . 'The distribution of literature does not require that the recipient stop in order to receive the message the speaker wishes to convey; instead, the recipient is free to read the message at a later time . . . .'

Kokinda, ___U.S.___, 110 S. Ct., at 3123 (quoting *Heffron*, 452 U.S., at 665 (Blackmun, J., concurring)). In addition, a person offered a leaflet is free to decline it. It would be especially easy for an airline passenger whose hands are occupied with baggage to decline a leaflet without even breaking stride. Thus, it is extremely unlikely that leafletting would interfere with the normal activity of airport terminals or with the facilitation of air travel.[21/]

Aside from the fact that leafletting poses little *potential* interference with airport activities, neither of the courts below

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20/ Petitioners seek access only to the wide open spaces within the terminals where people are moving about. As the district court found, they do not seek to leaflet "in any private offices, ticket counters and lines, check-in areas, baggage claim areas, or exclusively-leased waiting areas – in short, those areas where concerns over security, congestion and captive audiences may be particularly acute." *International Soc'y for Krishna Consciousness v. Lee*, 721 F. Supp. 572, 578 n.9 (S.D.N.Y. 1989).

21/ Moreover, such activity is no more intrusive than if petitioners attempted to communicate their views verbally. *See United States v. Fennelly*, 726 F. Supp. 871, 874 (D.D.C. 1989) (recognizing that there is no principled distinction in government interest between banning leafletting and banning communication by word of mouth). Thus, if the Port Authority can constitutionally prohibit leafletting in the airport terminals, it might be free to ban oral communication as well – a result inconsistent with *Board of Airport Comm'rs of Los Angeles v. Jews For Jesus*, 482 U.S. 569 (1987) (finding unconstitutional a regulation prohibiting all First Amendment activities in the Los Angeles International Airport terminal).

found that the Port Authority presented any hard evidence of actual interference with airport activities or purposes with respect to leafletting, as opposed to solicitation. *See Lee*, 925 F.2d, at 582; *cf. Schad*, 452 U.S., at 75 (no evidence had been presented to establish that regulated activities interfered with the uses of the place). And, unlike the situation in *Vincent*, where the Court found that visual blight inherently accompanied the posting of every sign, there has been no showing that *every* act of distributing a leaflet in the airports, regardless of the specific time, place within the terminals, and manner of such activity, would inherently cause disruption. *See Taxpayers for Vincent*, 466 U.S., at 809-10 (distinguishing the posting of signs from the leafletting at issue in *Schneider*). Nor has the Port Authority attempted to find a less-intrusive alternative which could serve its asserted goals, as in *Heffron*, where the Court upheld a restriction on leafletting on public fairgrounds because the restriction was less than a total ban, and only *limited* distribution to fixed locations. *See Fernandes v. Limmer*, 663 F.2d 619, 633-635 (5th Cir. 1981), *cert. dismissed*, 458 U.S. 1124 (1982) (blanket prohibition on solicitation and distribution inside airport terminals overbroad).

In light of these facts, a ruling by this Court that the act of distributing literature interferes with the activity of the airports, and thus that the prohibition is constitutional, could open the door to substantial erosion of First Amendment protection for activities which have historically been found to lie at the core of First Amendment expression. Since the restriction on speech being scrutinized here is a broad time, place and manner regulation which applies to all types of speech, the Court's ruling will have implications beyond the instant activity of distributing religious materials; also at stake is First Amendment protection for societal and political speech.[22/] For example, the efforts of organizations

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22/ Justice Harlan has commented eloquently on the dangers of overreacting to what one might consider the fringes of protected speech:

> To many, the immediate consequence of this freedom may often appear to be only verbal tumult, discord, and even offensive utterance. These are, however, within established limits, in truth necessary side effects of the broader enduring values which the

(continued...)

like *amicus* Project VOTE, which is engaged in fundamental political speech in its efforts to encourage and enable citizens to exercise their right to vote, could clearly be affected by this Court's decision.

The right to vote is the most fundamental right in our system of government and exercise of that right is critical to the preservation of the system and of all other rights and freedoms enjoyed under it:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.

Wesberry v. Sanders, 376 U.S. 1, 17 (1964). Thus, speech which centers on a citizen's right to have a direct say in who will govern, and how, is fundamental to the First Amendment's essential role in ensuring an open and effective political process. *See New York Times v. Sullivan*, 376 U.S. 254, 269 (1964) (in its essence, First Amendment protects free political discussion so that "'government may be responsive to the will of the people'") (quoting *Stromberg v. California*, 283 U.S. 359, 369 (1931)).

As described above in its Statement of Interest, Project VOTE is engaged primarily in an effort to inform and increase civic participation and voter registration among millions who have not previously participated in elections, particularly low-income citizens. In order to target this audience, for some ten years Project VOTE has conducted many of its First Amendment activities in the waiting rooms and lobbies of various government agencies, including unemployment, welfare and food-stamp offices, which are

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22/ (...continued)

> process of open debate permits us to achieve. . . . We cannot lose sight of the fact that, in what otherwise might seem a trifling and annoying instance . . ., these fundamental societal values are truly implicated.

Cohen v. California, 403 U.S. 15, 24-25 (1971) (citations omitted).

forums were many people congregate. Nowhere else can large numbers of such citizens be reached nearly as effectively.[23/] Nor is there a more appropriate setting in which to advise them of their rights to vote and to encourage the exercise of those rights.

Government efforts to curtail these and similar activities have been consistently held by lower courts to violate the First Amendment, based primarily on findings that these waiting areas and lobbies are public forums, that bans on such communication efforts are not reasonable, and that such activities do not interfere with the proper functioning of such places.[24/] That First Amendment analysis is clearly at issue in this case. Should the Court narrowly constrict public forum doctrine, find that the airports are non-public forums, and then find that distribution of leaflets is incompatible with airport activity, it could undermine numerous decisions upholding the right of Project VOTE and other similar organizations to access the only practical public places where they can communicate with populations of unregistered voters, inform them of their fundamental right to vote, and help them to exercise that right.

23/ *See, e.g., Albany Welfare Rights Org. v. Wyman*, 493 F.2d 1319 (2d Cir.), *cert. denied*, 419 U.S. 838 (1974) (finding that state welfare offices were the only appropriate places in which plaintiffs could identify and organize welfare recipients); *Unemployed Workers Union v. Hackett*, 332 F. Supp. 1372 (D.R.I. 1971) (ruling that state unemployment office waiting rooms were the only place in which plaintiffs could identify their target population and that the offices' general nature, essential purpose, and pattern of usual activity made them appropriate forums).

24/ *See, e.g., New York City Unemployed and Welfare Council v. Brezenoff*, 677 F.2d 232 (2d Cir. 1982); *Albany Welfare Rights Org. v Wyman*, 493 F.2d 1319 (2d Cir.), *cert. denied*, 419 U.S. 838 (1974); *Neighborhood Information Sharing Exchange v. Engler*, No. 4:91-CV-140 (W.D. Mich. 1991); *Project Vote v. O'Hara*, No. 84-4333-CV-C-5 (W.D. Mo. Sept. 27, 1984); *Project Vote v. Freeman*, Civ. No. 84-509-B (S.D. Iowa July 26, 1984); *Project Vote v. Thornburgh*, No. 84-1255 (E.D. Pa. 1984); *Project Vote v. Orr*, No. I P 84-394-C (S.D. Ind. March 25, 1984); *Project Vote v. Ohio Bureau of Employment Services*, No. C-1-82-905 (S.D. Ohio Sept. 13, 1982); *Unemployed Workers Union v. Hackett*, 332 F. Supp. 1372 (D.R.I. 1971).

CONCLUSION

For the forgoing reasons, the airport terminals are public forums and the judgment of the court of appeals on this point should be reversed. Further, under a public forum analysis, the Port Authority's blanket prohibition on the distribution of literature violates the First Amendment. Even if the airport terminals are not traditional public forums, the judgment of the court of appeals that the leafletting prohibition is unconstitutional since it does not allow reasonable access to the terminals for the distribution of literature should be upheld.

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